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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,942	06/01/2001	Ivette Principe	6838-1	4887

7590

02/26/2003

FLEIT, KAIN, GIBBONS, GUTMAN & BONGINI, P.L.
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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 02/26/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/872,942	PRINCIPE, IVETTE <i>pl</i>	
	Examiner	Art Unit	
	Norca L. Torres-Velazquez	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 13-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 19-21 is/are rejected.
- 7) ☒ Claim(s) 4 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-12 and 19-21, drawn to a product, classified in class 442, subclass 304.
 - II. Claims 13-18, drawn to a process of making, classified in class 156, various subclasses.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process can be use to make a carpet heat sink laminate that can use an aluminum layer with a thickness higher than 1.5 mils.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Robert Kain, Jr. on January 16, 2003 a provisional election was made without traverse to prosecute the invention of group I, claims 1-12 and 19-21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Objections

5. Claims 4 and 20 are objected to because of the following informalities: the recitation “with one of...” is not a proper Markush group. It should recite “from the group consisting of”. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

7. Claims 3-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 3 recites the limitation "including dyeing the composite" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Further, it is noted that the recitation “including dyeing the composite...” is a process limitation to which no patentable weight is given since this is a product claim.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claim 1 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by LaMARCA, II et al. (US 5,149,582).

LaMARCA, II et al. discloses a flame barrier, puncture-resistant composite fabric sheet material. The reference teaches a method of preparing a substrate material 64 that is used in the composite material of their invention. Figure 3 shows a sequential step method 50 in which a modified, nonwoven, cellulosic fibrous sheet material 52 (modified viscose rayon treated with silicic acid to enhance flame resistance of 3.5 ounces per square yard) is fed with an aluminum metal foil sheet 54 into a needle puncher or tacker apparatus wherein the aluminum foil is fragmented, enmeshed and distributed on the top surface and needle punched within the nonwoven sheet to form a composite material 66. The material 66 is carried over aprons 58 into another loom or needle puncher apparatus 62 with a stretchable polyester knit material 60 wherein the composite material 66 is needle punched through the knit material 60 to form a finished substrate 64. (Column 7, lines 16-37; also refer to Column 3, lines 22-43) The reference further discloses that the nonwoven fabric sheet material employed in the practice of their invention may be comprised of a variety of fibers, but typically employs flame-resistant type fibers, such as synthetic fibers, to include but not be limited to flame-resistant polyester fibers. (Column 3, lines 22-26) The reference further teaches the use of fluorocarbon resins. (Column 6, line 31).

LaMARCA, II et al. teaches that the metal foil employed in the practice of their invention any thin, metal foil type material or combination, and more particularly comprises an aluminum foil, for example, having a thickness of about 0.2 to 2 mils. The metal foil provides a flame barrier and also serves as a heat sink in the resulting composite fabric sheet material and aids in stopping vertical flame propagation. (Column 4, lines 35-43)

While LaMARCA, II et al.'s invention is typically employed as a covering of foam cushions; it recognizes that the composite fabric sheet material of their invention will have applications on a wide variety of field where a highly flame- and puncture-resistant fabric sheet material is desired. (Column 5, lines 19-30)

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2, 8-9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaMARCA, II et al. as applied to claims 1 and 19-21 above, and further in view of BRINK et al. (US 4,901,738).

While LaMARCA et al. teaches the use of needle punching, it fails to teach the use of latex adhesive to laminate the knit fabric with the aluminum sheet and the non-woven fabric.

BRINK et al. discloses a laser shield that comprises at least one opaque flexible nonwoven, knit or woven fabric sheet, which has at least one major surface, juxtaposed with a metal layer. Attachment of metal layer 14 to fabric sheet 12 may be accomplished by adhesive layer 16, or by other suitable means such as heat laminating or mechanical fastening means. (Column 2, lines 47-56) The reference teaches the use of polyester as a material for the nonwoven fabric sheet. (Column 3, lines 27-31) The metal layer 14 is preferably a metal foil of aluminum, with a thickness between about 2.5×10^{-3} mm and 2.0 mm [which is equivalent to 0.098-78 mils]. BRINK et al. further teaches the use of latex adhesives for bonding of the

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layers. In a preferred embodiment of BRINK's invention a second fabric sheet is laminated to the underside of metal layer 14 by second adhesive layer 18. (Column 4, line 40-68 through Column 5, lines 1-51)

Since both LaMARCA et al. and BRINK et al. are from the same field of endeavor of burn resistant fabrics, the purpose disclosed by BRINK et al. would have been recognized in the pertinent art of LaMARCA et al.

LaMARCA et al. discloses the claimed invention except that needle punching is used instead of latex adhesive, BRINK et al. shows that the use of adhesive is an equivalent structure known in the art. Therefore, because these two bonding means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute needle punching which is a mechanical fastening mean for the use of a latex adhesive.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over LaMARCA, II et al. and BRINK et al. as applied to claims 1-2 above, and further in view of SEIBERT (US 5,568,666).

SEIBERT discloses a method for coloring a synthetic textile for gaming tables and pool tables that uses a mixture of dye and gel that is applied to the fibrous synthetic textile in a manner that is effective to dye the fibers of the top surface while leaving the pattern on the bottom surface substantially free of dye. (Column 1, lines 49-57)

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the laminate and provide it with a colored fibrous material for use in a gaming table with the motivation having a cloth with a brightness that is aesthetically

pleasing under casino lights, and having a resistance to degradation when exposed to human excretion such a sweat, and having a resistance to frictional wear while being substantially free of lint forming tendencies as disclosed by SEIBERT (Column 2, lines 7-12)

13. Claims 4-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaMARCA, II et al., BRINK et al. and SEIBERT as applied to claim 3 above, and further in view of HEINE (US 3,094,547).

HEINE teaches the use of phosphorus-containing fluorocarbon compound and polymers thereof. The invention relates to the sizing of fabrics to impart both repellency to water and resistance to absorption, and soiling by oily and greasy materials, to the coating and impregnation of matrices such as paper and leather, to the provision of certain desirable surfactant properties in polishes and plating baths, and for other purposes. The reference further discloses that an added object of the invention is to provide new materials for textile and leather treatment, release agents, surfactants, and for protective coatings on metal, wood, plastics and the like. (Column 1, lines 10-59)

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the top layer of the laminate and provide it with a sizing such as a phosphorus-containing fluorocarbon polymer with the motivation of imparting both repellency to water and resistance to absorption, and soiling by oily and greasy materials as disclosed by HEINE above.

Double Patenting

14. Claims 1-12 and 19-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of co pending

Application No. 09/903,767. Although the conflicting claims are not identical, they are not patentably distinct from each other because the co pending application claims a table cloth comprising: a layer of fire retardant treated knit polyester fabric laminated to a thin sheet of aluminum, said aluminum having a thickness of about 0.0005-1.5 mils, and said aluminum sheet laminated to a backing layer of synthetic fabric. On claim 4, the co pending application claims that the backing fabric layer is non-woven fabric. Claim 1 of the present application includes all the limitations recited above with the difference that instead of claiming a range for the thickness of the aluminum, it claims that the thickness is about 1.5 mils, which is within the range already claimed in the co pending application. Further, the independent claims 11 and 19 of the present application are not distinct from claims 1-4 of the co pending application. It is noted that on claim 19 of the present application, the aluminum sheet is "mounted" to a backing layer... further on claim 20, the mounting is done by adherence, which is the same as using an adhesive.

Regarding the independent claims of the present application, these are not distinct from the limitations claimed in the co pending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

JOHNSTON (US 5,580,410) – discloses a dispersed dye sublimation imaging method of a substrate.

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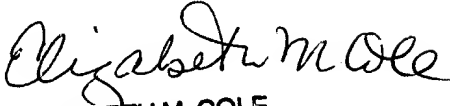
PORTER (US 4,086,112) – discloses a method of bonding and simultaneously printing a fabric.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 703-306-5714. The examiner can normally be reached on Monday-Thursday 8:30-3:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

nlt
February 20, 2003


ELIZABETH M. COLE
PRIMARY EXAMINER